

## PRE-BID CONFERENCE

TITLE: IFB2000000155

SUBJECT: **Penn Daw Electrical Equipment Upgrade**

A **mandatory** site visit and pre-bid conference will be held on March 28, 2012, starting at 12:30 P.M at **Penn Daw Fire Station, Training Room Lower Level, 6624 Hulvey Terrace, Alexandria VA 22306. The County Project Manager will be on site at 12:30 pm to escort perspective bidders through the facility to preview the project.** The County has scheduled one hour for the walk through and one hour for the conference.

The purpose of this conference is to allow potential bidders an opportunity to present questions and obtain clarification relative to any facet of this solicitation. All questions during the walk-through shall be held until the Pre-Bid Conference. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

Because this site visit and pre-bid conference are mandatory you must arrive promptly at 12:30 pm. Those who arrive late will not be permitted entry.

Bidders are requested to submit any questions pertaining to the IFB, in writing, prior to, the pre-bid conference to [dpsmteam2@fairfaxcounty.gov](mailto:dpsmteam2@fairfaxcounty.gov)

Drawings may be picked up at 12000 Government Center Parkway, suite 427, Fairfax, VA 22035. Drawings should be picked up prior to the Pre-bid Conference date. The fee for the drawings will be \$50.00 each. If paying by check, the check should be made payable to county of Fairfax.



# FAIRFAX COUNTY

## DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT

12000 GOVERNMENT CENTER PARKWAY, SUITE 427

FAIRFAX, VIRGINIA 22035-0013

www.fairfaxcounty.gov/dpsm

# VIRGINIA

TELEPHONE: (703) 324-3201 FAX: (703) 324-3228 TTY: 1-800-828-1140

<b>ISSUE DATE:</b> March 13, 2012	<b>INVITATION FOR BID:</b> 2000000155	<b>FOR: Penn Daw Electrical Equipment Upgrade</b>
<b>DEPARTMENT:</b> Facilities Management	<b>DUE DATE/TIME:</b> April 17, 2012 @ 2:00 pm	<b>CONTRACT SPECIALIST:</b> Brian Posner, 703-324-2854 or; brian.posner@fairfaxcounty.gov

**Bids** - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the bid is accepted, to furnish items or services for which prices are quoted, at the price set opposite each item, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

**Note:** Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

### NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No or

Federal Social Security No.(Sole  
Proprietor)

Prompt Payment Discount: \_\_\_\_% for payment within \_\_\_\_days/net  
\_\_\_\_days

State Corporation Commission (SCC)  
Identification No.

By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A.

**BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE:** ☐ LARGE (Y) ☐ SMALL (B)

☐ MINORITY-OWNED SMALL (X) ☐ MINORITY OWNED LARGE (V) ☐ WOMEN-OWNED SMALL (C)

☐ WOMEN OWNED LARGE (A) ☐ NON PROFIT (9)

CHECK ONE: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

State in which Incorporated: \_\_\_\_\_

Vendor Legally Authorized  
Signature

Date

Print Name and Title

Secretary

Sealed bids subject to terms and conditions of this invitation will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 on the due date and time specified, and then publicly opened and read.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



SPECIAL PROVISIONS1 INTENT OF CONTRACT:

- 1.1 The intent of this solicitation is to obtain sealed competitive bids to furnish all labor, materials, tools, and equipment, **to Replace / Upgrade the Electrical Distribution Equipment at Penn Daw Fire Station located at 6624 Hulvey Terrace Alexandria, VA. 22306**, in accordance with all terms, conditions, plans, and specifications contained herein.
- 1.2 Bidders are required to include the following with their bid. Failure to provide these items will result in the rejection of your bid.
- Vendor's legal authorized signature
  - List of Safety Violations (Ref. Special Provisions paragraph 7 )
  - **Copy** of State of Virginia's Contractor's License (Ref. Special Provisions paragraph 8)
  - Bid Security (Ref. Special Provisions paragraph 10)
  - References (Appendix B)

2. PRE-BID CONFERENCE:

- 2.1 A **mandatory** pre-bid conference and site visit will be held on March 28, 2012 at 12:30 p.m., at the **Penn Daw Fire Station, Training Room Lower Level, 6624 Hulvey Terrace, Alexandria, VA 22306. Prior to this conference, the County Project Manager will be on site at 12:30 pm to escort perspective bidders through the facility to preview the project.**
- 2.2 Attendees requiring special services are asked to provide their requirements to the Department of Purchasing and Supply Management ADA representative at (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements
- 2.3 The purpose of the pre-bid conference is to give potential bidders an opportunity to ask questions and to obtain clarification about any aspect of this Invitation for Bid. Bidders may submit any questions pertaining to the IFB, in writing, prior to the pre-bid conference to the contract specialist at [Brian.Posner@fairfaxcounty.gov](mailto:Brian.Posner@fairfaxcounty.gov) .

3. SITE INSPECTION:

- 3.1 Each bidder is expected to have become familiar with and take into consideration, site conditions that may affect the work and to check all dimensions at the site.
- 3.2 Each bidder shall acquaint themselves thoroughly as to the character and nature of the work to be done. Each bidder shall make a careful examination of the site of the work and inform themselves fully as to the difficulties to be encountered in performance of the work, the facilities for delivering, storing and placing materials and equipment and other conditions relating to construction and labor.
- 3.3 Each bidder shall examine the premises and the site and compare them with any applicable drawings and specifications. Each bidder shall familiarize themselves with the existing conditions such as obstructive area levels and any problems related to erecting the required systems.
- 3.4 No plea of ignorance of conditions that exist on the site of the work, or difficulties that may be encountered in the execution of the work, as a result of failure to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all the requirements of the contract documents and to complete the work, or as a basis for any claim.

SPECIAL PROVISIONS

- 3.5 The Contractor must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or County personnel at the site. Review the work Phasing Narrative on sheet T-1 of the Permit Plans obtained from the County.

4. COMMENCEMENT AND COMPLETION OF WORK:

- 4.1 The contractor shall notify the Owner's representative a minimum of three (3) working days in advance of the date work is to commence. The contractor shall submit all the required submittal documents and the paragraph by paragraph Specification Compliance Statement describing the differences between the specified and the proposed equipment items within ten (10) working after contract award.
- 4.2 Any work scheduled for weekends will be arranged 48 hours in advance.
- 4.3 Completion time for completing the replacement / upgrade of the electrical distribution equipment must be 120 days from the final approval date of submittals.

5. INTERPRETATION OF BID:

- 5.1 Please direct any questions pertaining to this solicitation to:

Brian Posner, Contract Specialist  
 Department of Purchasing & Supply Management  
 Telephone: (703) 324-2854  
 Email: Brian.Posner@fairfaxcounty.gov

- 5.2 The term "Engineer," "Project Engineer," "Project Manager" or similar terms refer to the Owner's representative for technical specifications contract coordination.

6. EQUAL PRODUCTS AND SUBSTITUTIONS:

- 6.1 Bidders are required to use the manufacturers as specified on the Permit Plans. No equal products or substitutions will be accepted.

7. FAIRFAX COUNTY CONSTRUCTION SAFETY RESOLUTION:

The Contractor shall comply with the resolution adopted by the Fairfax County Board of Supervisors on December 8, 2003, as amended:

- 7.1 It shall be required that each bid submitted to the County for a contract for construction, alteration, and/or repairs, including painting or decorating of a building, highway, street, bridge, sidewalk, culvert, sewer, excavation, grading, or any other construction, include a list of all the following actions which have become final in the three years prior to the bid submission:
- A. Willful violations, violations for failure to abate, or repeated violations, for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan for any other public jurisdiction; or
  - B. Three (3) or more serious construction safety violations for which the bidder was cited by the (a) United States Occupational Safety and Health Administration; or (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan from any other public jurisdiction.
  - C. Termination of a contract between the contractor and any public entity by their purchasing agent or his designee for safety violations.

SPECIAL PROVISIONS

- 7.2 If the bidder has not received or been the subject of any such violations referenced in paragraph 7.1 in the three (3) years prior to the bid submission, then the bidder shall so indicate by certification on the bid form entitled Certification of Safety Violations. The bidder will also indicate on this form each state in which work was performed in the three (3) years prior to the bid submission.
- 7.3 No bidder or contractor may bid on a County construction contract who has been the subject of any citations for the type and number of violations listed in aforementioned paragraph 7.1 which have become final within the three (3) years prior to the bid submission.
- A. Notwithstanding the language of paragraph 7.3, above, any bidder or contractor who has been the subject of a violation, as described in paragraph 7.1 A, which has become final in the three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria set forth in paragraph 7.4, below.
  - B. Notwithstanding the language of paragraph 7.3, above, any bidder or contractor who has been the subject of the type and number of violations as described in paragraph 7.2, which have become final within three (3) years prior to bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 7.5, below.
  - C. Notwithstanding the language of paragraph 7.1.C, above, any bidder or contractor who has previously been terminated from a public contract, as described in paragraph 7.1.C, within three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 7.5, below.
- 7.4 Prior to bidding on a project, under the provisions of paragraph 7.3 above, a contractor may request that a determination be made by the County's Purchasing Agent or designee, regarding their eligibility to submit a bid on a contract under the terms of this resolution. However, this request for determination and any subsequent adjudication process must be completed prior to submitting a bid on any project and the request for determination must be received by the County's Purchasing Agent or designee no later than twenty-one (21) days before bids are due unless otherwise stated in the Solicitation. A notice of the bidder's request for determination of eligibility will be posted publicly for comments by any interested party. The bidder's request for determination of eligibility and all supporting documentation provided by the bidder to the County in support of its request shall be open to the inspection of any interested person, firm or corporation in accordance to the requirements of Fairfax County Purchasing Resolution and Virginia Freedom of Information Act.
- 7.5 At the request of the Purchasing Agent or designee, the County Risk Manager shall evaluate a contractor's eligibility. Contractors may be subject to a special audit of their safety records as required. The criteria used by the Risk Manager in evaluating contractor's eligibility shall include but not be limited to the following:
- A. Corrective action taken by a bidder or contractor to prevent the recurrence of safety violations.
  - B. Days Away From Work Incident Rate for the past three (3) years.
  - C. Summary of Work-Related Injuries and Illnesses/Incident Rate for the past three (3) years.
    - 1. Worker's Compensation Experience Modification Rating for the past three (3) years.
    - 2. Fatality record for the past five (5) years.
    - 3. Detailed information regarding the firm's safety program including but not limited to a Safety and Health plan and qualifications of the safety personnel.
    - 4. Verification that management staff directly in charge of projects that experienced safety violations listed in aforementioned paragraph A will not be involved in the County project.

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5. Incorporation of safety and health related issues into their new employee orientation programs.
  6. Incorporation of work safety as a part of an employee's performance evaluation.
  7. Support of safety related matters by senior/corporate management. Does the firm have a safety policy statement signed by a member of senior/corporate management?
  8. Designation of a full time Safety Manager. Does this person report to a high level, authoritative position within the Company?
  9. Frequency and type of safety inspections conducted at work sites.
  10. The number and type of safety training programs conducted for employees.
  11. Frequency of safety "tailgate meetings" conducted by the firm.
  12. Designation of an active safety committee, frequency of their meetings and list of members of the committee.
  13. Active membership in a recognized construction safety organization in the Washington Metropolitan area, or in the state of contractor's domicile.
- 7.6 The determination of eligibility rendered by the Purchasing Agent or his designee shall be final unless it is appealed in accordance with the provisions of the solicitation or the Fairfax County Purchasing Resolution.
- 7.7 It shall be a condition of each County construction contract, as discussed above, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer, mechanic, or other person employed in the performance of the contract to work in surroundings or under working conditions which are hazardous or dangerous to his safety, as determined under construction safety standards promulgated by the U.S. Department of Labor or the Virginia Department of Labor and Industry.
- 7.8 The contractor awarded a County construction contract shall certify in writing that they will not knowingly, willfully, or recklessly employ or contract with any person, company, corporation, or any other entity for services pursuant to that contract if such person, company, corporation, or other entity could not have been awarded such contract due to the restrictions in paragraph 7.3, above.
- 7.9 The contractor shall also certify in writing that all safety related information provided in accordance with the Safety Resolution and contract requirements are complete, accurate and truthful.
- 7.10 The failure to provide information requested pursuant to this Resolution or the failure to conform to the certification requirements of this Resolution shall be grounds for disqualifying a prospective bidder.
- 7.11 The County may impose the following sanctions upon a contractor who willfully submits any false or misleading certification or information regarding material facts in connection with submissions pursuant to this Resolution, or willfully omits any certification or information regarding material facts in connection with submissions pursuant to this Resolution. The term willful shall include intentional or reckless acts or omissions.
- (1) Disqualify the prospective bidder from bidding a contract.
  - (2) Debar the contractor from bidding future contracts for a period not to exceed three years.
  - (3) Terminate the contract awarded to the bidder after providing notice and opportunity to be heard.

SPECIAL PROVISIONS8. STATE REGISTRATION OF CONTRACTOR:

- 8.1 If a contract is for one hundred and twenty thousand dollars (\$120,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the bidder within any twelve-month period is seven hundred-fifty thousand dollars (\$750,000) or more, the bidder is required under Title 54, Chapter 11, Code of Virginia (1950), as amended, to show evidence of being licensed as a "Class A Contractor." (Non Virginia licenses are not acceptable). If a contract is seventy five hundred (\$7,500) dollars or more but less than one hundred and twenty thousand dollars (\$120,000), the bidder is required to show evidence of being licensed as a "Class B Contractor". If a contract is one thousand dollars (\$1,000) or more but less than seventy five hundred dollars (\$7,500), the bidder is required to show evidence of being licensed as a "Class C Contractor."
- 8.2 ***The Code of Virginia does not allow an unlicensed contractor to submit a bid where the resultant contract will require a license. The bidder shall provide a copy of the license.***

9. SUBMISSION OF BIDS:

- 9.1 Each bidder must use the attached Pricing Schedule to submit their bid. Bidder must show completion time and lump sum price, on the pricing schedule. **All bidders must return two (2) copies of the Cover Sheet (DPSM30), duly signed, a form of bid security (ref. Special Provisions 10 and 11) and two (2) copies of Appendix B (Pricing Schedule, List of References Safety Violation Certificate, Business Classification Schedule and Subcontractors Notification Form), keeping all remaining pages for your files.** Bids may be mailed or hand delivered to the following location:
- Department of Purchasing & Supply Management  
12000 Government Center Parkway, Suite 427  
Fairfax, Virginia 22035-0013.
- 9.2 All bids shall be submitted in a sealed envelope or package with the bid number, title, and the bidder's name and address on the outside of such envelope or package.
- 9.3 **BIDS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED FOR CONTRACT AWARD AND WILL BE RETURNED TO THE BIDDER.**
- 9.4 Bidders are reminded that changes to the bid, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda MUST be signed and submitted to the Department of Purchasing and Supply Management, 12000 Government Center Parkway, Suite 427, Fairfax, VA 22035 before the due date/time or must accompany the bid. Notice of addenda will be posted on eVA and the DPSM current solicitation webpage. Bidders are responsible to monitor the web page for the most current addenda at [www.fairfaxcounty.gov/dpsm/solic.htm](http://www.fairfaxcounty.gov/dpsm/solic.htm).

10. BID SECURITY:

- 10.1 Bid security in the amount of two and one-half percent (2.5%) of the bid price is required with each bid in the form of a certified check or bid bond made payable to County of Fairfax, Virginia. Checks will be returned to all bidders within sixty (60) days after the date of the formal opening of the bids. The bid security must clearly make reference to this solicitation number and title. Bid bonds shall be issued by a surety company licensed and authorized to conduct business in the State of Virginia.

SPECIAL PROVISIONS11. ALTERNATIVE FORMS OF BID SECURITY:

- 11.1 In lieu of a bid, payment or performance bond a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- 11.2 If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.
- 11.3 The County may, at the discretion of the County Purchasing Agent, require bid, payment or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

12. CONTACT FOR ADMINISTRATION:

- 12.1 In the event a contract is executed with your firm as a result of this solicitation, indicate the person(s) that may be contacted for prompt contract administration in the space provided on the Pricing Schedule.

13. WITHDRAWAL OF BID:

- 13.1 A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw their bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of their claim of right to withdraw their bid within two (2) business days after the conclusion of the bid opening procedure.

14. BID EVALUATION/CONTRACT AWARD:

- 14.1 Bids will be evaluated on the basis of a firm fixed price, and award will be made to the lowest responsive and responsible bidder complying with all provisions of the invitation for Bid.
- 14.2 Paragraph 24, "Award or Rejection of Bids" of the General Conditions and Instructions to Bidders is amended to add: "Unless cancelled or rejected, a responsive bid from the lowest responsive and responsible bidder shall be accepted as submitted, except that if a bid from the lowest responsive and responsible bidder exceeds available funds, the County may negotiate with the apparent low responsive and responsible bidder to obtain a contract price within available funds."
- 14.3 Negotiation may be undertaken when there is insufficient time to readvertise with a modified specification and/or there are no clearly definable elements of the specifications which can be removed to permit a readvertisement or it is otherwise in the best interest of Fairfax County to negotiate.
- 14.4 If negotiation is undertaken, the County may negotiate changes in the solicitation with the lowest responsive and responsible bidder to obtain a satisfactory price within available funds. If a satisfactory price cannot be agreed to, then the negotiation shall be terminated and the solicitation cancelled.



SPECIAL PROVISIONS15. CONTRACT INSURANCE PROVISIONS:

- 15.1 The Contractor shall not commence work on the site until he/she has obtained all insurance required under this article nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until all similar insurance required of the subcontractor has been obtained. The Contractor shall agree to furnish certificates of such coverage if requested by the County Purchasing Agent.
- 15.2 The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risks of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.
- 15.3 The Contractor shall, during the continuance of all work under the Contract provide the following:
- a. Maintain statutory Worker's Compensation and Employers' Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
  - b. The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per aggregate/occurrence, to protect the Contractor, its subcontractors, and the interest of the County, its officers and employees, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
  - c. The Contractor agrees to maintain, owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per aggregate/occurrence, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
  - d. Builder's Risk Policy: The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County and Contractor and subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the contract. Such insurance value shall reflect any increases to the contract amount through change orders. Policy to be in Builder's Risk Completed Value forms, including the following:
    - 1. Policies shall be written to include the names of contractors and County and the words "as their interest may appear";
    - 2. all insurance shall be in effect on or before the date when construction work is to commence; and
    - 3. all insurance shall be maintained in full force and effect until the final acceptance of the project by the County.

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- e. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- f. The contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
- g. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The contractor must either:

- 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the contractor's or sub-contractor's work under this contract, or a copy of the endorsement itself.
  - 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- h. The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the County, the contractor and subcontractors.
  - i. Rating Requirements:
    - 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
    - 2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market's policy holder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating or better.
  - j. Hold-harmless and Indemnification: Article 63 of the General Conditions and Instructions to Bidders shall apply.
  - k. The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
  - l. The Contractor will secure and maintain all insurance certificates of its subcontractors that shall be made available to the County on demand.
  - m. The Contractor will provide on demand certified copies of all insurance coverage related to the Contract within ten business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.
- 15.4 No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45-day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 15.5 Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of the liability provisions of the Contract.

SPECIAL PROVISIONS

- 15.6 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- 15.7 Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 15.8 Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 15.9 The Contractor and all subcontractors and sub-subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
- 15.10 Any loss insured subparagraph "15.3d" is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause. The contractor shall pay each subcontractor a just share of any insurance monies received by the contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his/her sub-subcontractors in similar manner.
- 15.11 When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 15.12 The County, its officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."
- 15.13 A Fairfax County contract number must be provided on the certificate.
- 16. BONDS:
  - 16.1 The contractor shall furnish, within twenty (20) calendar days after execution of the contract, the following bonds, issued by a surety company licensed and authorized to conduct business in the State of Virginia, made payable to the County of Fairfax. All bonds must clearly make reference to this solicitation number and title.
    - a. Performance Bond in the amount equal to one hundred percent (100%) of the contract price on AIA Document A311, February 1970 Edition or equivalent.
    - b. Labor and Materials Payment Bond in an amount equal to one hundred percent (100%) of the contract price on AIA A311, February 1970 Edition or equivalent.
  - 16.2 Failure to provide the required bonds, within twenty (20) calendar days, will constitute a material breach of the contract, for which the County may terminate the contract for cause.

SPECIAL PROVISIONS17. ADDITIONAL OR SUBSTITUTE BOND:

- 17.1 If the Owner becomes dissatisfied with any surety or sureties then upon the Performance Bond, or if for any other reason, each Bond shall cease to be adequate security to the Owner, the Contractor shall substitute an acceptable bond in such form and sum and signed by such other sureties as may be satisfactory to the Owner within five (5) days after notice. The premiums on such bond shall be paid by the Contractor. No further payment shall be deemed due nor shall be made until the new sureties shall have qualified.

18. PURCHASE ORDER:

- 18.1 A purchase order for the items/service listed in this Invitation for Bid will be enclosed with the resulting contract or will be issued shortly thereafter and will become an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia and assures distribution of the necessary receiving reports.
- 18.2 The purchase order does not supersede any provisions of the Acceptance Agreement. Performance time and dates are determined solely by the contract, and any modification thereto.
- 18.3 Services/supplies are not to begin until receipt of the purchase order or other notification by the County Purchasing Agent to proceed.
- 18.4 The Department of Purchasing and Supply Management has the capability to issue purchase orders electronically and transmit them to vendors by fax. For more information about the Fax Purchase Order program, call (703) 324-3268, TTY 1-800-828-1140.

19. CONSTRUCTION SCHEDULE AND SCHEDULE OF VALUES:

- 19.1 Within ten (10) working days after being selected as the contractor for the project, the General Contractor shall provide a complete estimated construction progress schedule depicting time and efforts of all trades involved in the work. This shall be submitted for approval by the Owner's representative for contract coordination.
- 19.2 The contractor shall submit all the required submittal documents and the paragraph by paragraph Specification Compliance Statement describing the differences between the specified and the proposed equipment items within ten (10) working after contract award. Upon receipt of the approved submittals, the contractor shall provide within ten (10) days, factory certified outline dimensions of the generator for coordination of stub-ups and generator pad.
- 19.3 Prior to the first application for payment, submit a proposed schedule of values to the owner's representative for contract coordination. The schedule of values should accurately reflect the cost of each activity as represented on the construction schedule (ref: Special Provisions, paragraph 19.1) and the sum of the increments shall total the contract price.

20. CORRESPONDENCE:

- 20.1 All communications between the parties relating to details, progress and coordination of the work shall be through the Engineer and shall be deemed binding only when in writing.

SPECIAL PROVISIONS21. PERMITS AND LICENSES:

- 21.1 The Contractor is responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work without additional expense to the County. The Contractor is similarly responsible for all damages to persons or property that occurs as a result of their fault or negligence. The Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor is also responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction previously accepted.

22. REPRESENTATIONS OF CONTRACTOR:

- 22.1 The Contractor represents and warrants:

- a. The firm is financially solvent and that manager is experienced in and competent to perform the type of work, or to furnish the plans, materials, supplies or equipment to be so performed or furnished; and
- b. that contractor is familiar with all Federal, State, municipal and department laws, ordinances and regulations, which may in any way affect the work of those employed, including but not limited to any special acts relating to the work or to the project of which it is a part; and
- c. that such temporary and permanent work required by the Contract Documents as is to be done by the contractor can be satisfactorily constructed and used for the purpose of which it is intended and that such construction will not injure any person, or damage any property; and
- d. that contractor has carefully examined the plans, the specifications and the site of the work and that from the contractor's own investigations, he/she has satisfied themselves as to the nature and location of the work, the character, quality, quantity of surface and subsurface materials likely to be encountered, and character of equipment and other facilities needed for the performance of the work, the general and local conditions and all other materials which may in any way affect the work or its performance.

23. SUPERINTENDENCE BY CONTRACTOR:

- 23.1 At the work site, the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that the representative shall be acceptable to the Engineer and shall be one who can be continued in that capacity for the particular job involved, unless he/she ceases to be on the Contractor's payroll.

24. POWER OF CONTRACTOR TO ACT IN EMERGENCY:

- 24.1 In case of an emergency that threatens loss or injury of property and/ or safety of life, the Contractor is permitted to act without previous instructions from the Engineer as deemed appropriate. The contract must notify the Engineer immediately after of any actions taken.
- 24.2 The engineer shall approve any compensation claimed by the Contractor due to such extra work.
- 24.3 Where the Contractor has not taken action but has notified the Engineer of an emergency threatening injury to persons or damage to the work, or any adjoining property, upon authorization from the Engineer to prevent such threatened injury or damage, the engineer shall direct the contractor's actions. The amount of reimbursement claimed by the Contractor on account of any such action shall be determined in the manner provided in Paragraph 36 hereof for the determination of compensation to be paid for extra work.

SPECIAL PROVISIONS25. PLANS AND SPECIFICATIONS - INTERPRETATIONS:

- 25.1 The Contractor shall keep at the site of the work, one copy of the plans and specifications signed and identified by the Engineer and shall at all times give the Engineer and other representatives of the Owner access. Anything shown on the plans and not mentioned in the specifications, or mentioned in the specifications and not shown in the plans, shall have the same effect as if shown or mentioned respectively in both. In case of any conflict or inconsistency between the plans and specifications the decision of the Engineer shall govern. Also, any discrepancy between the figures and drawings shall be submitted by the Contractor to the Engineer whose decision shall be conclusive.

26. USE OF PREMISES:

- 26.1 The contractor confine the apparatus, storage of materials, and activities of personnel on or about the premises and adjacent areas, in accordance with the law, ordinances, permits and the directions of the Owner's representative. The contractor shall not encumber the premises with such materials or apparatus or adjacent areas. The work site shall be kept in such orderly fashion as will not interfere with the progress of the work or the work of any other contractor.
- 26.2 The contractor is responsible for repairing or replacing any work damaged by his/her operations within ten (10) days after notification by the Owner's representative.
- 26.3 It is the responsibility of the contractor to report in writing, to the Project Engineer any damages found prior to any work at the site.

27. PROTECTION OF WORK AND PROPERTY:

- 27.1 The contractor shall protect the Owner's property from injury or losses in connection with this contract at all times. The contractor's own work and that of adjacent property (as provided by law and the contract documents) from damage shall be guarded. The contractor shall replace or make good any such damage, loss or injury unless caused directly by errors contained in the contract documents or by the Owner or by his/her duly authorized representatives. All passageways, guard fences, lights and other facilities required for protection by local authorities or local conditions must be provided and maintained.

28. STORAGE OF MATERIALS:

- 28.1 Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When considered necessary, they shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be placed under cover when directed. Stored materials shall be located so as to facilitate proper inspection. Equipment that is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the Owner or lessee.

29. STANDARD PRODUCTS:

- 29.1 All materials, supplies, and articles furnished shall be the standard products of recognized, reputable manufacturers, as specified and otherwise practicable. The standard products of manufacturers other than those specified, will be accepted when it is proved to be the satisfaction of the Engineer, that they are equal in strength, durability, usefulness and convenience for the purpose intended. Any changes required in the detail and dimensions indicated on the drawings, for the substitution of standard products other than those provided for, shall be made as approved by the Engineer and at the expense of the contractor.

SPECIAL PROVISIONS30. ALL WORK SUBJECT TO CONTROL OF ENGINEER:

30.1 In the performance of the work, the Contractor shall abide by all orders, directions and requirements of the Engineer and shall perform all work to the satisfaction of the Engineer and at such times and places, by such methods and in such manner and sequence as he may require. The Engineer shall determine the amount, quality, acceptability and fitness of all parts of the work, shall interpret the plans, specifications, Contract Documents, and any extra work orders and shall decide all other questions in connection with the work. The Contractor shall employ no plans, equipment, materials, methods or persons to which the engineer objects and shall remove no plant, materials, equipment or other facilities from the site of the work without the Engineer's permission. The Engineer shall confirm in writing, any oral order, direction, requirement or determination.

31. ENGINEER'S CONTROL NOT LIMITED:

31.1 The County's Project Manager will control the work under the contract. The contractor must perform all the work to the complete satisfaction of the Project Manager. Examples given or statements made in the Special Provisions and the Contract Documents pertaining to the method of work performance are examples, only. Bidders should not assume that the Project Manager's direction is limited to those items only, but applies to all work performed under the contract.

32. INCOMPETENT OR DISORDERLY EMPLOYEES:

32.1 If any person employed on the work by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, such person shall be removed immediately on the requisition of the Engineer, and shall not again be reemployed (on subject project) except on written consent of the Engineer.

33. WORKMANSHIP:

33.1 Only first-class work shall be performed and all materials furnished in carrying out this contract and shall be of character and quality required by the specifications. Such work or materials shall be the best of their respective kinds, where no standard is specified. Any unsatisfactory work done or materials furnished shall be immediately removed and satisfactorily replaced by the contractor when notified to do so by the Engineer at whatever time the inferior work or materials may be discovered.

33.2 If the contractor neglects or refuses to remove such unsatisfactory work or materials within forty-eight hours after the receipt of notice, or if satisfactory progress is not made in doing so, the Engineer may effect removal of the inferior work or materials and the expense shall be charged to the contractor. Such expense shall be deducted from any monies due or to become due the contractor under the contract. Upon completion of the contract the entire work shall be delivered to the Owner perfect and complete in satisfactory working condition.

33.3 The contractor expressly undertakes at his own expense:

- a. to effect all cutting, fitting or patching of his work required to make same conform to the plans and specifications and except with consent of the Engineer not to cut or otherwise alter the work of any other contractor, and
- b. to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

SPECIAL PROVISIONS34. CHANGES AND ALTERATIONS:

- 34.1 The Owner reserves the right to make alterations in the installation of items of work shown on the plans, as may be necessitated by conditions found during construction that in the judgment of the Engineer appear advisable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the Owner's Engineer.

35. NECESSARY DETAILS NOT SPECIFICALLY MENTIONED:

- 35.1 Any and all work that may be called for in the specifications and not shown on the plans, or shown on the plans and not called for in the specifications, shall be furnished and executed by the Contractor as if designated. The contractor shall furnish all required work or material which is not denoted in the plans and specifications either directly or indirectly, but which is necessary for project.

36. EXTRA WORK:

- 36.1 The Owner may require the performance of extra work and/or changes as necessary or desirable, at any time, by a written order and without notice to the sureties.
- 36.2 The amount of compensation to be paid to the Contractor for any extra work shall be determined by unit prices, or by a lump sum mutually agreed upon by the Owner and the Contractor.
- 36.3 A change proposed must be submitted within ten (10) days from the request for a proposal to change, add or delete work.
- 36.4 The Contractor's proposal shall be on a lump sum basis and shall be itemized and segregated by labor, materials and equipment for the various components of the change in the work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any subcontractors who will perform any portion of the change in the work and of any persons who will furnish materials or equipment for incorporation therein.
- 36.5 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its subcontractors, may include reasonable anticipated gross wages of job site labor including foremen, who will be directly involved in the change in the work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such subcontractor in connection with such labor).
- 36.6 The portion of the proposal relating to material may include the reasonable anticipated costs to the Contractor or to any of its Sub-contractors of materials to be purchased for incorporation in the change in work, plus transportation and applicable sales or use taxes.
- 36.7 The proposal may further include the Contractor's and any of his/her subcontractor's reasonable anticipated rental costs, except small hand tools, in connection with the change in the work (either actual rates or discounted local published rates).
- 36.8 Base cost is defined as the total of labor, material and rental in the original contract. The actual net cost in money to the Owner for the change in the work shall be computed as follows:
- a. If the Contractor performs the change in the work, his/her compensation will be the Base Costs as described above, plus a maximum mark-up of fifteen percent (15%) of the base cost for overhead and profit.



SPECIAL PROVISIONS

- b. If the work is performed by a bona fide subcontractor, his/her compensation will be the base costs as herein described plus a maximum mark-up of fifteen percent (15%) of the base cost for overhead and profit. The Contractor's compensation will be a maximum mark-up of five percent (5%) of the subcontractor's base cost for his/her overhead and profit.
- c. If the work is performed by a bona fide sub-subcontractor, his/her compensation will be the base costs as herein described plus a maximum mark-up of fifteen percent (15%) for overhead and profit. The subcontractor's compensation will be a maximum mark-up of five percent (5%) of the sub-subcontractor's base cost for his/her overhead and profit. The Contractor's compensation will be a maximum mark-up of five percent (5%) of the sub-subcontractor's base cost for his/her overhead and profit.
- d. The fifteen percent (15%) mark-up on the cost of labor and materials described above shall compensate the Contractor or subcontractor or sub-subcontractor for all indirect costs associated with or relating to the change of the work including, but not limited to, gross receipts tax, superintendence, small tools, reproduction, administration, insurance, bonds, safety, temporary structures and offices, all other general and administrative, home office and field office expenses and profit.
- e. The five percent (5%) mark-up on the cost of labor and materials described above shall compensate the Contractor or subcontractor for all indirect costs associated with or relating to the change in the work including but not limited to, gross receipt tax, superintendence, reproduction, administration, insurance bonds.
- f. In the event that it is necessary to increase the contract time in order to perform the change in the work, the Contractor shall provide an estimate of the increase in the contract time, which shall be negotiated by the parties to the contract.
- g. If the Contractor's proposed change is rejected by the Owner as being with in the scope of the work required by the contract documents the Owner may, at its sole option and discretion, direct the Contractor to perform the work which is the subject of the said proposed change; the Contractor shall then promptly proceed with said work. Nothing shall excuse the timely performance by the Contractor of the work because any proposed change is pending.

36.9 These provisions shall not affect the power of the Contractor to act in case of an emergency.

37. DECREASES IN WORK UNDER LUMP SUM ITEMS:

- 37.1 The Owner or Engineer may, at any time, decrease in dimension, quantity of material or work, or alter the situation or levels, or vary the form of dimensions of any part of the work or alter the project in any way. Such changes shall be made in writing in accordance with the contract and the difference in expense resulting from the decrease or change ordered shall be deducted from the amount payable under this contract. If the incremental cost of the decrease is not identified in the project schedule, the Engineer shall determine the amount of deduction based on a proper, fair and reasonable allowance for the lesser amount of materials and labor required. If necessary in order to establish such fair allowance, the contractor may be required to submit a detailed breakdown of his/her original bid for the items of work involved. Alterations or changes that diminish the quantity of work to be done shall not constitute a claim for damages or for loss of anticipated profits in the work.

38. WEATHER CONDITIONS:

- 38.1 In the event of temporary suspension of work or during inclement weather, or whenever the Engineer shall direct, the Contractor will require any subcontractors to protect carefully all materials and work against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials have been damaged or injured by reason of failure on the part of the Contractor or any subcontractors to protect his/her work and materials shall be removed and replaced at the expense of the Contractor.

SPECIAL PROVISIONS39. EXTENSION OF TIME: NO WAIVER:

- 39.1 If the Contractor is delayed in the completion of his/her work by reason of unforeseeable causes beyond his/her control and without his/her fault of negligence, including but not restricted to acts of God or the public enemy; acts of neglect to the Owner, acts or neglect of any other Contractor, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotion, or freight embargoes, the period specified for the completion of his/her work shall be extended by such time as shall be fixed by the Owner.
- 39.2 No such extension of time shall be deemed a waiver by the Owner or his right to terminate the contract for abandonment or delay by the Contractor as herein provided to relieve the Contractor from full responsibility for performance of his/her obligations hereunder.
- 39.3 Paragraph 49 of the General Conditions is amended to read, "DELAY - Should the contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. Claims for damages or extra compensation shall be limited to direct costs attributed to the delay."
- a. A Contractor making a claim against the County for costs or damages due to the alleged delaying of the Contractor in the performance of its work under any County Construction contract shall be liable to the County and shall pay it for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

40. CLEANING UP:

- 40.1 The contractor shall keep the premises and adjacent areas free from accumulations of waste material or rubbish at all times. After daily completion of work, all rubbish, tools, used for work and surplus materials shall be removed from and about the premises and adjacent areas, and the area shall be "broom cleaned" and ready for use for the next day. In case of a dispute, Fairfax County may remove rubbish or otherwise clean up, and may charge the Contractor either by deduction from amounts unpaid to the Contractor, or by other means with such cost as the Project Engineer shall determine to be fair and equitable.

41. EXAMINATION OF DEFECTIVE WORK:

- 41.1 If required by the Engineer under execution of this contract, the contractor shall at any time pull down or undo any part of the work and make such openings as may be required and enable the Engineer to make proper inspection and the contractor shall make good again the work so pulled down, undone or opened to the Engineer's satisfaction. If the work is found faulty, in any respect the whole of the expenses incurred shall be incurred by the Contractor, but if the work be found not faulty by the Engineer, the expenses thereby incurred shall be incurred by the Owner.

42. REJECTION OF INFERIOR MATERIAL:

- 42.1 An inspection and approval of the materials by the Engineer shall not in any way subject the Owner to pay for any portion of the materials, even if said materials, incorporated in the work, turn out to be unfit. Such inspection shall not be considered as any waiver of objection to the work on account of the unsoundness of the material used.

SPECIAL PROVISIONS43. PAYMENTS:

## 43.1 Payments to the Contractor will be made as follows:

The Owner will make partial payment to the Construction Contractor on the basis of a duly certified approved estimate of the work performed during the preceding calendar month by the Construction Contractor, not later than the 30 days from receipt by the County of a properly completed invoice. The Owner will retain 5 percent of the amount of each such estimate until final completion and acceptance of all work covered by this contract. Upon filing with the Engineer copies of invoices for material, there may be included in the monthly estimates 95% of the value of all materials delivered to the site of the work which is to enter into actual construction. Each monthly payment request document shall be an original and four copies and shall be submitted to the Engineer. The original document shall include original typing and signatures. The four copies shall include original signatures. All five documents shall be notarized. Payment will be made after submittal of an approved pay estimate. The amounts of monthly certifications for payment shall be considered approximate. The Owner reserves the right to withhold monthly payments if work is not proceeding according to contract.

44. OWNER'S RIGHT TO WITHHOLD PAYMENTS:

## 44.1 The Owner may withhold from the Contractor so much of any approved payments due him as may in the judgment of the Owner be necessary:

- a. To assure the payment of just claims then due and unpaid of any persons supplying labor or materials for the work;
- b. To protect the Owner from loss due to defective work not remedied or;
- c. To protect the Owner from loss due to injury to persons or damage to the work or property of other contractors, subcontractors or others, caused by the act or neglect of the Contractor or of any of his/her subcontractors. The Owner shall have the right as Agent for the Contractor, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to accrue such protection. Such applications of such money shall be deemed payments for the account of the Contractor.

45. OWNER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

## 45.1 If:

- a. the Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or
- b. a receiver or liquidator shall be appointed for the Contractor or for any of his/her property and shall not be dismissed within 20 days, or after such an appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 days; or
- c. the Contractor shall refuse or fail, after Notice of Warning from the Engineer, to supply enough properly skilled workmen or proper materials; or
- d. the Contractor shall refuse or fail to prosecute the work with such diligence as will insure its completion within the period specified (or any duly authorized extension) or shall fail to complete the work within said period; or

SPECIAL PROVISIONS

- e. the Contractor shall fail to make prompt payment to persons supplying labor or materials for the work; or
- f. the Contractor shall fail or refuse to regard laws, ordinances, or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of this contract, then and in any such event, the Owner, without prejudice to any other rights or remedy it may have, may by seven (7) days notice to the Contractor, terminate the employment of the Contractor and his/her right to proceed either as to the entire work or (at the option of the Owner) to any portion thereof as to which delay shall have occurred, and may take possession of the work and complete the work by contract or otherwise as the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation to be paid the Contractor shall exceed the expense of completing the work (including compensation for additional managerial, administrative and inspection services and any damages for delay) such excess shall be paid to the Contractor. If such expenses shall exceed such unpaid balance, the Contractor and his/her sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is terminated, the Owner may take possession of and use such materials, appliances, supplies, plans and equipment as may be on the site of the work, and necessary therefore, for completing the work. If the Owner does not so terminate the right of the Contractor to proceed, the Contractor shall continue the work.

46. WARRANTY:

- 46.1 All work provided under this contract shall have, as a minimum, a one (1) year warranty from the date of final acceptance thereof against any latent defects, design, materials, workmanship, installation, fraud, or such gross mistakes, as may amount to fraud. **Bidder shall indicate on pricing page the manufacturer's warranty on all electrical equipment required if different than one year indicated above.**
- 46.2 Bidders are required to have a five (5) year comprehensive manufacturer's warranty for the Automatic Transfer Switch from the final date of acceptance.

47. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE:

- 47.1 The acceptance by the Contractor of the final payment constitutes a release to the Owner of all claims and of all liability to the Contractor for all work or materials furnished in connection with agreement and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claims for interest upon the final payment if this payment is improperly delayed. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance Bond.

48. ERRORS:

- 48.1 The Contractor shall make no claim against the Owner because the estimates, tests or representations of any kind affecting the work made by any officer or agent of the Owner may prove to be erroneous, in any respect.

49. ORDER OF PRECEDENCE:

- 49.1 In the event of conflict, the Acceptance Agreement and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders, included herein.

SPECIAL PROVISIONS50. SUBCONTRACTING:

- 50.1 If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us>; local chambers of commerce and other business organizations.
- 50.2 All subcontractors are required to have an appropriate trade license for this project.
- 50.3 As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

51. NEWS RELEASES BY VENDORS:

- 51.1 As a matter of policy, the County does not endorse the products or services of a contractor. News releases concerning any resultant contract from this solicitation will not be made by a contractor without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

52. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 52.1 Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements.
- 52.2 Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment.

Your acceptance of this contract acknowledges your commitment and compliance with ADA.

53. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

- 53.1 Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award

# COUNTY OF FAIRFAX COMMONWEALTH OF VIRGINIA

## GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**1. AUTHORITY** -The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

### **2. DEFINITIONS-**

**AGENCY:** Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

**BEST VALUE:** As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

**BID:** The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

**BIDDER/OFFEROR:** Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

**CONSULTANT SERVICES:** Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

**CONTRACTOR:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

**COUNTY:** County of Fairfax.

**GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

**INFORMALITY:** A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

**INVITATION FOR BID (IFB):** A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

**PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

**PURCHASING AGENT:** The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

**QUICK QUOTE (QQ):** A method of competitive bidding for the purchase or lease of goods, non professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less the \$50,000.

**REQUEST FOR PROPOSAL (RFP):** A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

**RESPONSIBLE BIDDER/OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required. (Reference paragraph 24, General Conditions and Instructions to Bidders).

## General Conditions and Instructions to Bidders

**RESPONSIVE BIDDER/OFFEROR:** An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

**SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

**SOLICITATION:** The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an Open Market Procurement (OMP), or telephone calls to prospective bidders.

**STATE:** Commonwealth of Virginia.

### CONDITIONS OF BIDDING

**3. BID FORMS-**Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope or package. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

#### 4. LATE BIDS & MODIFICATIONS OF BIDS-

- a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:
  1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or
  2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.
- b. If an emergency or unanticipated event or closing interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, the due date/time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal County business operations resume.
- c. The official time used for receipt of bids/modifications is the Bid Clerk's time and date stamp clock located in the Department of Purchasing and Supply Management. All bidders are responsible for ensuring all bids/modifications are received prior to the scheduled due date/time.
- d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

#### 5. WITHDRAWAL OF BIDS-

- a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- b. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:
  1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.
  2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

## General Conditions and Instructions to Bidders

- e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
  - f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
  - g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.
- 6. ERRORS IN BIDS-**When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
- 7. MAILING OF BIDS –** All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted in a sealed envelope or package identified with the solicitation number, title, bidder's name and address, and due date/time of opening/closing clearly marked on the outside of such envelope or package.
- 8. COMPLETENESS-**To be responsive, a bid must include all information required by the solicitation.
- 9. ACCEPTANCE OF BIDS/BINDING 90 DAYS-**Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
- 10. CONDITIONAL BIDS-**Conditional bids are subject to rejection in whole or in part.
- 11. BIDS FOR ALL OR PART-**Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
- 12. AREA BIDS-**For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
- 13. TIME FOR RECEIVING BID-**Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.
- 14. BID OPENING-**All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: <http://www.fairfaxcounty.gov/dpsm/solic.htm>. Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.
- 15. OMISSIONS & DISCREPANCIES-**Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.
- Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
- 16. RESPONSE TO SOLICITATIONS-**In the event a vendor cannot submit a bid on a solicitation, he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.
- 17. BIDDER INTERESTED IN MORE THAN ONE BID-**If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
- 18. TAX EXEMPTION-**The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.



## General Conditions and Instructions to Bidders

**19. PROHIBITION AGAINST UNIFORM PRICING-**The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

### SPECIFICATIONS

**20. QUESTIONS CONCERNING SPECIFICATIONS-**Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

**21. BRAND NAME OR EQUAL ITEMS-**Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

**22. FORMAL SPECIFICATIONS-**When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

**23. FEDERAL SPECIFICATIONS-**Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

### AWARD

**24. AWARD OR REJECTION OF BIDS-**The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
- k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

## General Conditions and Instructions to Bidders

**25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-**A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
- b. General Conditions and Instructions to Bidders,
- c. Special Provisions and Specifications,
- d. Pricing Schedule,
- e. Any Addenda/Amendments/Memoranda of Negotiations

**26. TIE-BIDS** – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

**27. PROMPT PAYMENT DISCOUNT-**

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer.

**28. INSPECTION-ACCEPTANCE-**For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

**29. DEFINITE BID QUANTITIES-**Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

**30. REQUIREMENT BID QUANTITIES-**On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

### CONTRACT PROVISIONS

**31. TERMINATION OF CONTRACTS-**Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

**32. TERMINATION FOR CONVENIENCE-**A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

## General Conditions and Instructions to Bidders

### 33. TERMINATION OF CONTRACT FOR CAUSE-

- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the Contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

**34. CONTRACT ALTERATIONS-**No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

**35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-**It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

**36. FUNDING-**A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

**37. DELIVERY/SERVICE FAILURES-**Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

**38. NON-LIABILITY-**The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

**39. NEW GOODS, FRESH STOCK-**All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

**40. NON-DISCRIMINATION-**During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

### 41. SMALL AND MINORITY BUSINESS UTILIZATION

- a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
- c. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

## General Conditions and Instructions to Bidders

**42. GUARANTEES & WARRANTIES**-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

**43. PRICE REDUCTION**-If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent.

The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

**44. CHANGES**-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

**45. PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

### DELIVERY PROVISIONS

**46. SHIPPING INSTRUCTIONS - CONSIGNMENT**-Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

**47. RESPONSIBILITY FOR SUPPLIES TENDERED**-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

**48. INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

**49. COMPLIANCE**-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

**50. POINT OF DESTINATION**-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

## General Conditions and Instructions to Bidders

**51. ADDITIONAL CHARGES-**Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

**52. METHOD AND CONTAINERS-**Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

**53. WEIGHT CHECKING-**Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

**54. DEMURRAGE AND RE-SPOTTING-**The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

**55. REPLACEMENT-**Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

**56. PACKING SLIPS OR DELIVERY TICKETS-**All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,
7. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

### BILLING

**57. BILLING-**Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

### PAYMENTS

**58. PAYMENT-**Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

**59. PARTIAL PAYMENTS-**Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

**60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-**When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

### GENERAL

**61. GENERAL GUARANTY-**Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

## General Conditions and Instructions to Bidders

### 62. SERVICE CONTRACT GUARANTY-Contractor agrees to:

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

**63. INDEMNIFICATION-**Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

### 64. OFFICIALS NOT TO BENEFIT-

- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

**65. LICENSE REQUIREMENT-**All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: [http://www.fairfaxcounty.gov/dta/business\\_tax.htm](http://www.fairfaxcounty.gov/dta/business_tax.htm). The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

**66. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**67. COVENANT AGAINST CONTINGENT FEES-**The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**68. VIRGINIA FREEDOM OF INFORMATION ACT-**All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Reference Section 4.D., of the Fairfax County Purchasing Resolution)

## General Conditions and Instructions to Bidders

### BIDDER/CONTRACTOR REMEDIES

#### 69. INELIGIBILITY-

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
  1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
  1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
  3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
    - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;
  5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
  6. The contractor has abandoned performance or been terminated for default on any other Fairfax County project;
  7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

#### 70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

#### 71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

## General Conditions and Instructions to Bidders

### 72. PROTEST OF AWARD OR DECISION TO AWARD-

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

### 73. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**74. LEGAL ACTION-**No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

**75. COOPERATIVE PURCHASING-**The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

**76. PROFESSIONAL AFFILIATION-**The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

**77. DRUG FREE WORKPLACE-**During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.



## General Conditions and Instructions to Bidders

**78. VENUE:** This contract and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia, that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this contract or any performance hereunder, shall be brought in the applicable court of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.

**79. IMMIGRATION REFORM AND CONTROL ACT:** Contractor certifies that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**80. CONTRACTOR NOT TO BENEFIT:** Contractor agrees that the goods and/or services provided to Fairfax County pursuant to this Agreement are for the benefit of Fairfax County and that Contractor shall not undertake any actions or efforts stemming from or related to this Agreement that shall inure to the detriment of Fairfax County. Any information provided to the Contractor for the performance of this Contract shall not be used for any other purpose without the written consent of the Purchasing Agent.

**APPROVED:**

/S/ David P. Bobzien  
COUNTY ATTORNEY

/S/ Cathy A. Muse  
COUNTY PURCHASING AGENT

The following documents which are included in this Solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- A. County of Fairfax Cover Sheet (DPSM30)
- B. Special Provisions & Specifications
- C. Appendix A (General Conditions)
- D. Appendix B (Pricing Schedule, Small Business Classification Schedule, Sample Jurisdiction Listing and Subcontractors Notification Form)

**CONTACT FOR ADMINISTRATION:**

NAME: \_\_\_\_\_

ADDRESS: (Office) \_\_\_\_\_

TELEPHONE/FAX: (Office) \_\_\_\_\_

E-MAIL: \_\_\_\_\_

PAY TO ADDRESS: (If different from Firm address on Cover Sheet)

\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATION OF SAFETY VIOLATIONS:

NAME(S) OF INSTALLER(S) AND/OR SUBCONTRACTOR: (Re: Paragraph 7)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE NUMBER(S): \_\_\_\_\_

LIST SAFETY VIOLATIONS (Reference paragraph 7 Special Provisions).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If there were no safety violations list each state in which work was performed in past 3 (three) years (Ref. Paragraph 7.):

\_\_\_\_\_

\_\_\_\_\_

I hereby certify that the above information is correct to the best of my knowledge.

\_\_\_\_\_  
Principal

State of \_\_\_\_\_)

County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after first being duly sworn, appeared before me, the undersigned Notary Public and executed the foregoing instrument and acknowledge to me that he executed the same as and for the act and deed of said firm.

(SEAL) \_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

## Pricing Schedule

**PRICE SUMMARY:** Provide all labor, materials & equipment with accessories to **replace / upgrade electrical distribution equipment and dispose of materials and equipment identified on the plan to be removed and replaced, at one location (see item 1)** in accordance with all terms, conditions, specifications, and drawings contained herein.

Item No.	Item Description	Quantity	Unit of Measure	Lump Sum Price
1.	<p>Replace / Upgrade Electrical Distribution Equipment, at the Penn Daw Fire Station, located at 6624 Hulvey Place, Alexandria VA. 22306, per plans and specifications herein and attached.</p> <p>Submittals should be submitted within ten (10) working days after contract award.</p> <p><i>*Bidders are required to use the manufacturers as specified on the Permit Plans. No equal products or substitutions will be accepted.</i></p>	1	Lump Sum	\$ _____

REFERENCES

**References:** List below three (3) references for which you have performed similar work for Replacement and Upgrade of Electrical Distribution Equipment while the building was occupied within the past three (3) years.

1.

Company_____	Address_____
Reference Name _____	Reference Position Title _____
Telephone Number_____	Date of Installation_____
Generator KW/Voltage _____	Diesel or Gas_____

2.

Company_____	Address_____
Reference Name _____	Reference Position Title _____
Telephone Number_____	Date of Installation_____
Generator KW/Voltage _____	Diesel or Gas_____

3.

Company_____	Address_____
Reference Name _____	Reference Position Title _____
Telephone Number_____	Date of Installation_____
Generator KW/Voltage _____	Diesel or Gas_____



## BUSINESS CLASSIFICATION

### DEFINITIONS

**Small Business** – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

**Minority-Owned Business** - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

**Woman-Owned Business** – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPSM 30) **This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.**



COUNTY OF FAIRFAX  
DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT  
SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM (SMBEP)  
12000 Government Center Parkway, Suite 427  
Fairfax, Virginia 22035-0013  
Fax: 703-324-3228

SUBCONTRACTOR (S) NOTIFICATION FORM

Contract Number/Title: \_\_\_\_\_

Prime Contractors Name: \_\_\_\_\_

Prime Contractor's Classification Code: \_\_\_\_\_ (from Business Classification Schedule)

In accordance with the Subcontracting paragraph of the Special Provisions for the above-cited contract, you are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification (use code numbers from previous page) of each first-tier subcontractor. Please complete this form and return it to this office with your bid package.

Please check here if you are not using a subcontractor: \_\_\_\_\_

SUBCONTRACTOR(S) NAME	STREET ADDRESS	CITY	STATE	ZIP CODE	ANTICIPATED DOLLAR AMOUNT	SMALL/MINORITY CLASSIFICATION

**Complete and return this form with your bid. Contract award may not be made without it.**